THE LOS ANGELES BAR ASSOCIATION

BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION, LOS ANGELES, CALIFORNIA

VOLUME 12
NUMBER 11

JUNE 17, 1937

10c A COPY
$1.00 A YEAR

CONTENTS

National Labor Relations Act . . . Coming Conference of Bar Delegates . . . Reasons for Bar Membership . . . Early California Reports . . . Municipal Corporation Practice . . .

Bi-Weekly Luncheon ▼ Ethics Committee's Opinions
American Bar Association Opposes Supreme
▼ Court Increase ▼

PARKER & BAIRD COMPANY - LAW PRINTERS - LOS ANGELES

NATIONAL LABOR RELATIONS ACT

Editor's Note: This is the second of a series of articles on the National Labor Relations [Wagner] Act, prepared by members of the Los Angeles Bar Association. A third will appear in the next issue. The first installment appeared in the May Bulletin, under Jack W. Hardy's name.

By Thomas T. Inch, of the Los Angeles Bar

THE authors of the Federal Constitution empowered Congress "To regulate commerce with foreign Nations, and among the several States, . . ."[1] but whether they intended or contemplated the federal government should thereby regulate conditions of labor in private industry may be open to strenuous academic controversy. Primary concern, however, is with the actuality that Congress has assumed such power reposes in the "commerce clause" and that the Supreme Court of the United States has affirmed the assumption.

Any attempt toward a legalistic or even practical understanding of the "Wagner Act cases" or the scope and extent of the "commerce power" of the national government is enhanced by a summary review of some of those decisions of the Supreme Court definitive and interpretive of the "commerce clause."

The first indication of the extent of the power "to regulate commerce" was given in *Gibbons v. Ogden,*[2] wherein it was declared:

> "If as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

In recognizing this power as plenary, acknowledgment was made of the indispensable corollary that to be "plenary" it must also be free from encroachment when Chief Justice Marshall affirmed the contention that

> ". . . as the word 'to regulate' implies in its nature, full power to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing."

Nearly a century passed after the adoption of the Constitution before Congress attempted any exercise of affirmative power over commerce between the states. Nevertheless, the definitive development of the power progressed for, during this period, the Supreme Court upon numerous occasions was called upon to define what the states could or could not do in so far as their activities were claimed to interfere with or burden interstate commerce.

COMMERCE POWER

The last fifty years have added much to the conception of the "commerce power" as the increasing complexity of the social structure has occasioned the need of regulation of human relationships, and the federal lawmakers have sought for sources of *power* under which such regulation might be effected. In the "commerce clause" they have found one storehouse sufficiently full to supply a multitude of their needs. The power over commerce has been employed not only to prescribe the rules and conditions for transacting interstate business, but as the need has arisen, Congress has resorted frequently to its power "to regulate

---

[1]Article 1, Section 8, Clause 3, United States Constitution.
[2]9 Wheat. 1, 22 U. S. 1, 6 L. Ed. 23 (1824).

LOS ANGELES BAR ASSOCIATION BULLETIN

Official Monthly Publication of Los Angeles Bar Association. Entered as second-class matter August 8, 1930, at the Postoffice at Los Angeles, California, under Act of March 3, 1879.

VOL. 12 | JUNE 17, 1937 | No. 11

LAWYERS LIST PLAN IN OPERATION; PRESIDENT THANKS COMMITTEE

By Loyd Wright, President

I DESIRE to express the appreciation of the officers and trustees of the Association to the committee which formulated the plan for the Experienced Lawyers List, a service to members now in operation through the Association's office.

The committee, composed of Roy V. Rhodes, chairman; Arthur L. Syvertson, Horace Vedder, William A. Monten, and Ray E. Nimmo, successfully performed a difficult task with credit to itself and the Association.

The rules governing the Experienced Lawyers List were published in a recent issue of THE BULLETIN, but I think it might be well again to call attention to the pamphlet setting forth the particulars of the service. These pamphlets may be obtained from the office of the Executive Secretary of the Association.

The purpose of the service, as heretofore explained, is to furnish to lawyers and laymen, upon request, the names of lawyers experienced in general practice or in some particular branch of the law. Any member in good standing who has been continuously engaged in active practice for five years, may apply for registration. The service is administered with the utmost care and without favoritism, under the rules formulated by the Committee whose membership is shown above. I again express my appreciation to the Committee.

commerce" to justify such measures as the Sherman[3] and Clayton[4] Anti-Trust Acts, the Mann Act,[5] the Harrison Narcotic Act,[6] the Pure Food and Drug Act,[7] the Dyer Act,[8] and, most recently, the Wagner Act.[9]

An attempt to define "commerce among the several states" or the "power to regulate commerce" would be an undertaking which has resisted the efforts of many constitutional authorities, and in certain notable instances, the Supreme Court of the United States.

Perhaps the most succinct and oft-quoted statement of what constitutes commerce among the several states is found in *Gibbons v. Ogden:*[10]

> "Commerce, undoubtedly is traffic, but it is something more,—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

A more recent exposition is that of Mr. Justice Hughes in the *Minnesota Rate Cases:*[11]

> "The words 'among the several states' distinguish between *the commerce which concerns more states than one* and that commerce which is confined within one state and does not affect other states." (Italics ours.)

Congressional regulation of commerce among the states which received approbation by the Supreme Court was largely confined to control of interstate carriers and enterprises admittedly engaged in interstate commerce until the Wagner Act decisions upheld the right to control the activities of persons engaged in intrastate business "affecting commerce" in such manner as to burden or obstruct commerce or the free flow of commerce. Notable exceptions have been the regulation of private enterprise and labor organizations under the provisions of the anti-trust laws, and the exclusion from interstate commerce or its facilities of persons or commodities which might be conducive to harmful results occurring in a State other than that of origin. Concededly, those acts directly burdening or obstructing interstate commerce are within the power of Congress to regulate.

Pursuant to its interpretation of this power, Congress enacted the National Labor Relations [Wagner] Act,[12] which declared, in Section 1:

> "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the diminution of employment and wages in

---

[3]Act of July 2, 1890, c. 647, 26 Stat. at L. 209.
[4]Act of October 15, 1914, c. 323, 38 Stat. at L. 730.
[5]Act of March 26, 1910, c. 128, 36 Stat. at L. 263.
[6]Act of December 17, 1914, c. 1, 38 Stat. at L. 785.
[7]Act of June 11, 1884, c. 75, 23 Stat. at L. 40.
[8]Act of October 29, 1919, c. 89, 41 Stat. at L. 324.
[9]Act of July 5, 1935, c. 372, 49 Stat. at L. 449.
[10]9 Wheat. 1, 22 U. S. 1, 6 L. Ed. 23 (1824).
[11]Simpson v. Shepard, 230 U. S. 352, 57 L. Ed. 1511, 33 Sup. Ct. 729 (1913).
[12]Act of July 5, 1935, c. 372, 49 Stat. at L. 449.

such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce. . . ."

and declared it

". . . to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

In Section 2, it is declared:

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

"The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

LABOR BOARD

The act provides for the creation and organization of the National Labor Relations Board;[13] recognizes the right of employees to self-organization and to bargain collectively through representatives of their own choosing;[14] defines "unfair labor practices";[15] prescribes rules for the selection of representatives by employees for the purpose of collective bargaining;[16] empowers the Board to prevent "unfair labor practices" and outlines the procedure for enforcement of the Act[17]; and grants broad investigatory powers to the Board.[18] Nothing in the Act is to be considered as an interference with the right to strike.[19]

The constitutionality of the Act was challenged in five cases.[20] Three of the cases have caused much discussion and aroused grave concern by sustaining the applicability of the Act to local manufacturers whom many believe properly should be exempt from federal regulation, at least so long as that regulation is attempted to be justified under the power of Congress to regulate interstate commerce. The other cases involved, respectively, a nationwide news service and a bus company admittedly engaged in interstate commerce, and consequently have not occasioned such extensive comment.

---

[13]Act of July 5, 1935, c. 372, 49 Stat. at L. 449, [National Labor Relations Act], Sections 3-6, incl.

[14]*Id.*, Section 7.

[15]*Id.*, Section 8.

[16]*Id.*, Section 9.

[17]*Id.*, Section 10.

[18]*Id.*, Sections 11-12, incl.

[19]*Id.*, Section 13.

[20] National Labor Relations Board v. Jones & Laughlin Steel Corporation; Same v. Fruehauf Trailer Co.; Same v. Friedmann-Harry Marks Clothing Co., ... U. S. ...., 81 L. Ed. 563, ...* Sup. Ct. Rep. .... (decided April 12, 1937); Associated Press v. National Labor Relations Board, ... U. S. ...., 81 L. Ed. 603, ... Sup. Ct. Rep. .... (decided April 12, 1937); Washington & V. M. Coach Co. v. Same, ... U. S. ...., 81 L. Ed. 601, ... Sup. Ct. Rep. .... (decided April 12, 1937).

The major opinion was rendered in the case of the Jones & Laughlin Steel Corporation wherein the constitutional issues raised in all five cases were determined, and the other cases were decided in conformity therewith.

The Jones & Laughlin Steel Corporation was a Pennsylvania corporation engaged in manufacturing iron and steel products in plants located in Pennsylvania, and was the fourth largest producer of steel in the United States, having nineteen subsidiaries located in various states which owned and operated mineral properties, transportation facilities, and marketing agencies in connection with its production plants, all of which were conducted in such fashion as to be a "completely integrated enterprise". Seventy-five per cent. of the products of manufacture ultimately were shipped out of Pennsylvania. The corporation was alleged to have violated the Act by discharging certain workers engaged at its Aliquippa, Pennsylvania, plant for participating in union activities, whereupon it was ordered by the National Labor Relations Board to cease and desist from such "illegal" acts. Respondent corporation refused to recognize the order on the ground that the Act was unconstitutional. Pursuant to the Act, the matter was referred to the Circuit Court of Appeals which sustained respondent's contention. Thereafter, upon petition of the Board the decision of the Circuit Court was brought before the Supreme Court of the United States for review.

UNCONSTITUTIONALITY ARGUMENT

In the Supreme Court the respondent renewed its contentions of unconstitutionality, which in main were: (1) that the Act in its entirety was invalid as being a deliberately calculated effort on the part of Congress to regulate the labor relations of all industry and thereby to usurp the powers reserved to the States as to local matters; (2) that the industrial relations of respondent as a local manufacturer were not subject to federal control under the commerce power; and (3) that the Act was in derogation of the rights secured to respondent by the Fifth Amendment as it imposed arbitrary restraints on the manner in which it conducted its business.

In response to the first contention, the Court replied that if the intent of Congress were as claimed and if such intent or purpose were indispensable to any construction of the Act, it would be invalid by virtue of the principles set forth in the *Schechter case*,[21] but since it is a fundamental precept of statutory construction "to save and not to destroy", the Court was bound to sustain any specific provisions which upon examination appear valid, although the constitutionality of general provisions in the same statute might be open to serious question.

It was with this doctrine in mind that the Court passed to a consideration of whether or not Congress could regulate the labor relations of respondent and its employees on the theory that although respondent was not engaged in interstate commerce, nevertheless the local labor practices of respondent were such that they tended to lead to labor disputes which would burden or obstruct commerce or the free flow of commerce. The Court reasoned that as the Act extends only to activities which burden or obstruct interstate commerce, and as such activities have long been subject to regulation under the commerce power, it must follow that the power is not subject to modification because of the character of the source of the burden or obstruction, the *effect* alone being the criterion, and since the Act leaves the question of whether a particular activity "affects" commerce to be determined in each individual instance, it

(Continued to page 332.)

[21] A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 79 L. Ed. 1570, 55 Sup. Ct. 837 (1935).

COMING CONFERENCE OF BAR DELEGATES

CHAIRMAN HARRISON RYON of Conference of State Bar Delegates, has called upon all accredited delegates to the Conference of Bar Associations Delegates, which meets at Del Monte September 8, to submit resolutions of proposed changes in law before July 10. The communication follows:

"Your attention is directed to the requirement that a resolution proposing or suggesting a change in law, or which will require legislation to accomplish its intent, must be filed sixty days before the Annual Meeting of the State Bar if it is desired that such resolution be considered by the Conference and the Convention at the Annual Meeting. Furthermore, all resolutions proposing changes in law shall be accompanied by the text of the proposed new law or the proposed amendment. These requirements are set forth in section 12 of Article VI of the Rules and Regulations of the State Bar.

The Conference will meet this year at Del Monte on September 8, 1937, to be followed by the Annual Meeting of the State Bar on September 9 to 11, inclusive. Sixty days in advance of this date means that the deadline upon receipt of resolutions of the nature described will be July 10.

It is suggested that if your association has in mind introducing a resolution or resolutions involving changes in law, that immediate consideration should be given the resolution and a proposed draft prepared, and sent to the Secretary of the State Bar, Claude Minard, 2100 Mills Tower, San Francisco, at your earliest convenience.

All delegates are requested to see that this letter is read to the membership of their associations at the next meeting so that individual members of the association will be advised and will prepare and send in, through their association, whatever resolutions they may have in mind."

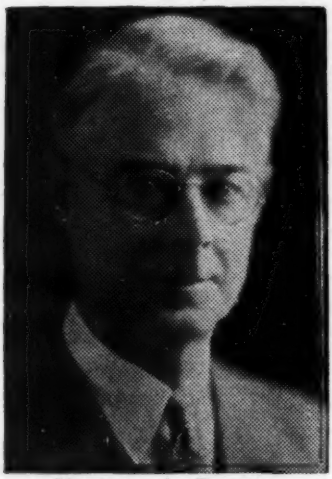
The first meeting of Los Angeles Bar Associations Delegates was held at the State Bar office, Los Angeles, on June 15, to consider resolutions and suggestions.

Following is the Association's delegation who are expected to attend the Del Monte conference:

Julius V. Patrosso, Chairman
Allen W. Ashburn
Frank B. Belcher
Norman Bailie
John Kerns Bennett
Kenneth Chantry
Loyd Wright
Ray L. Chesebro
Joe Crider, Jr.
Alex W. Davis
Birney Donnell
Walter F. Dunn
Herbert Freston
Betty Marshall Graydon
Jack Hardy
Hallack W. Hoag
Pauline Hoffman
H. Sidney Laughlin
Warren E. Libby
Ned Marr
Ewell D. Moore
J. W. Mullin, Jr.
Paul Nourse
E. D. Lyman
J. W. McKinley
Arnold Praeger
Maurice Saeta
Joseph Smith
Arthur L. Syvertson
Ernestine Stahlhut
David Tannenbaum
W. W. Wallace
Rex Hardy
Hon. Guy R. Crump
Edna Covert Plummer
T. W. Robinson
Leonard Slosson
Herman Selvin
J. C. Macfarland
George Breslin
C. E. McDowell

COMPELLING REASONS FOR BECOMING MEMBER OF BAR ASSOCIATION

By Norman A. Bailie, Chairman Membership Campaign Committee



NORMAN A. BAILIE.

WHY should a lawyer belong to a voluntary Bar Association? Why should he or she pay dues to both the State Bar of California and a local association? What is the reason for having local associations, since the organization of the State Bar?

There are many reasons; here are a few. The local association is in close touch with problems, peculiar to the city and the county, which are of only passing interest to the state as a whole. The selection of judges, the building of a new court house, the examination of proposed legislation affecting the administration of justice, the arbitration committee which settles disputes between lawyers, and between lawyers and their clients—these are some of the functions of a local association. There are many others, equally compelling.

The Los Angeles Bar Association holds bi-weekly luncheons where live legal subjects are discussed by experts. The attendance at these luncheons is about one hundred. The radio broadcasts keep us in touch with our citizens as a whole, and the legal lectures at the Los Angeles Public Library have made such an impression that a request has been made to have them published in book form.

One very important function of the local associations is their representation in the Conference of Bar Association Delegates to the State Bar Convention. The members of the Conference digest all proposed legislation to be sponsored by the State Bar, and see to it that the legislators understand our program and the reasons back of it.

Lawyers must become acquainted with one another. With the large number of lawyers—nearly six thousand in Los Angeles County—this is impossible without a local association. Charles Warren, in "A History of the American Bar" says: "Many older lawyers have been of the opinion that the largest and best part of legal education was . . . this mingling of the whole bar together . . . and the enforced personal relations which were thus brought about." Our monthly meetings, our luncheons, our golf tournaments—they make us know one another, and we all benefit.

A New Membership Committee has been appointed, but what can it do without your help? Every member of the Los Angeles Bar Association is on that committee. He has one duty—to bring in *one* new member before August first. Let us double the membership of the association.

The Board of Trustees has authorized the following schedule of dues for membership to December 31, 1937:

1. Members of the bar, including both men and women, who have been admitted by examination during the last seven years—
   - (a) Those admitted in the Fall class of 1936 and those admitted in the Spring class of 1937 ..... $1.25
   - (b) Those admitted in the Fall class of 1935 and those admitted in the Spring class of 1936 ..... 2.50
   - (c) Those admitted in the Fall class of 1934 and those admitted in the Spring class of 1935 ..... 3.75
   - (d) Those admitted in the Fall class of 1933 and those admitted in the Spring class of 1934 ..... 5.00
   - (e) Those admitted in the Fall class of 1932 and those admitted in the Spring class of 1933 ..... 5.00
   - (f) Those admitted in the Spring class of 1932 ..... 6.00
   - (g) Those admitted during the year of 1931 ..... 6.00
   - (h) Those admitted during the year of 1930 ..... 6.00
2. All others shall pay one-half of the regular yearly dues.

Call at the office of the Los Angeles Bar Association, 1124 Rowan Building, or phone (Vandike 5701) for application blanks.

BROWSING IN EARLY CALIFORNIA REPORTS

E. W. Camp, of the Los Angeles Bar

THE great debate on the proposal to "rejuvenate" the Supreme Court of the United States revives interest in a few almost forgotten opinions long ago handed down by justices of our State Supreme Court.

Section 25 of Chapter 20 (approved September 24, 1789) of the Acts of the first session of the First Congress may for present purposes be skeletonized thus: ". . . A final judgment . . . in any suit in the highest court . . . of a State . . . where is drawn in question the validity of a . . . statute of . . . the United States . . . and the decision is against their [its] validity . . . may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error . . ."

In *Johnson v. Gordon,* 4 Cal. 368 (1854) the Court, of which Murray, Wells and Heydenfeldt were the justices, discussed this section and said that they accepted the arguments made and the conclusions reached by counsel for Virginia in *Martin's Heirs v. Hunter's Lessee,* I Wheaton 304, and in John C. Calhoun's Discourse on the Government and Constitution of the United States. To the argument that such an appeal is necessary to insure uniformity and avoid conflict of jurisdictions they replied that both of these difficulties are incident to the judicial system of every civilized people, and that the Act of 1789 did not secure uniformity. "The appeal is only allowed where the decision of the State Court is adverse to the law of Congress or treaty, etc. If therefore one State affirms the validity of a law of Congress and another State declares it void, if the Supreme Court of the United States sustains the latter, the rule will be different in the two States."

And so the justices declared: "Neither a writ of error nor appeal lies to take a case from a State Court to the Supreme Court of the United States."

Forthwith the Legislature passed Ch. 72, Laws of 1855, which in effect undertook to make that Section 25 of Chapter 20 of the Acts of the First Congress the law of California.

The Johnson case was cited with approval in *Taylor v. Steamer Columbia,* 5 Cal. 268 (273). It was cited again in *Gunn v. Bates,* 6 Cal. 263 (271). In these cases the Act of 1855 was not mentioned.

"ALL WET."

In *Warner v. Steamer Uncle Sam,* 9 Cal. 697, the ruling in the Johnson case was not involved, but counsel commented on it and Justice Burnett wrote a long opinion to show that the Johnson opinion was "all wet." That stirred Chief Justice Terry to indite a shorter screed maintaining the rule of the Johnson case. In referring to the queer statute of 1855 he was too evidently trying to conceal contempt for the coordinate branch of the government.

In *Ferris v. Coover,* 11 Cal. 176, Justices Baldwin and Fields, who with Chief Justice Terry now composed the Court, disapproved the rule of *Johnson v. Gordon;* but Terry repeated and elaborated the views expressed in that case; and said that the State Act of 1855 was of no effect.

In *Hart v. Burnett,* 20 Cal. 169, the Johnson case is not cited, but it is clear that the rule of that case was no longer regarded as law.

Finally in *Greeley v. Townsend,* 25 Cal. 613, decided in 1864, Chief Justice Sanderson said:

"The origin and history of the (State) Act of 1855 (Stat. 1855, 80), are well known. Five months prior to its passage the then Supreme Court of this State in the case of Johnson v. Gordon, 4 Cal. 368, had declared that the twenty-fifth section of the Federal Judiciary Act of 1879 was unconstitutional, and declared that no case could be taken from a State Court to a Federal Court by writ of error or otherwise. The decision was made upon the authority of the Court of Appeals of Virginia in the case of Martin v. Hunter's Lessee, and in harmony with the ultra state rights doctrine of Calhoun and his political followers; the soundness of which is now undergoing its last test upon the bloody battlefields of the Republic. Startled by the judicial enunciation of a doctrine which they had previously contemplated only in its political and partisan aspect, and which in their eyes may have acquired additional importance by reason of the immediate sanction of the highest court of the State, the Legislature sought to provide a remedy against its supposed evils by interposing a barrier to its further judicial progress; apparently without pausing to consider whether a remedy was within the constitutional reach of state legislation. The motive was a good one, but, as all must admit, the power was wanting. It is not within the constitutional power of a state legislature to confer jurisdiction upon Federal Courts, or prescribe the means or mode of its exercise. . . . If constitutional, the occasion for such legislation no longer exists, for the case of Johnson v. Gordon has been long since overthrown and a contrary doctrine firmly established in this State."

Of the justices who had participated in this line of cases Wells and Murray had died before 1864, Heydenfeldt had resigned, Burnett's and Baldwin's terms had expired; Field was in Washington, the new tenth member of the Supreme Court of the United States, and Terry was serving in the army of the Confederate States.

And since 1864 the Supreme Court of California has never cited *Johnson v. Gordon.*

BI-WEEKLY LUNCHEON MEETINGS

HARRY J. MCCLEAN
Chairman Luncheon Committee

THE series of luncheon meetings that have been held every other Tuesday during the past three months, have proved highly successful, both from the standpoint of attendance and of subjects discussed by the speakers. As announced by President Wright in his program for the year, these meetings are designed to present speakers who are specialists in their particular field.

From the very first meeting, which was addressed by Mr. Joseph Brady on the subject of Income Tax Problems, the attendance has grown, and the interest of lawyers has increased. At the last meeting, Mr. Ralph T. Seward, counsel for the National Labor Relations Board, explained the details of practice and procedure before the Board. At the June 29th meeting, State Corporation Commissioner Doherty will explain some of the procedural problems in practice before the Corporation Commissioner's department.

These discussions by eminently qualified speakers have been, and will continue to be, a real contribution to the general practitioner.

Much credit for the success of the undertaking is due to the committee in charge of the meetings, who have taken much care to select men who are able to illuminate the problems which confront the general practitioner. This committee, of which Harry J. McClean is chairman, is composed of the following bar association members:

Harry J. McClean, Chairman
Kimpton Ellis
Joseph D. Brady
Louis N. Whealton
Harry Graham Balter
Harold S. Kiggens
W. L. Nossaman
Halcott B. Thomas
Arthur L. Syvertson
Reuben G. Hunt
Maurice Saeta
Jack W. Hardy
David Tannenbaum
George W. Cohen
Ned Marr
Earl E. Johnson
Burdette J. Daniels
Henry William Bruce
Charles Baird Taylor
Walter A. Johnson

Something to think about! Los Angeles, a county of about 2,750,000 population—and without a Court House!

OPINIONS BY BAR COMMITTEE ON LEGAL ETHICS

A MEMBER of the Bar has submitted an inquiry from which it appears that a client, having severed relations with an attorney, demands the latter's complete office file pertaining to client's transactions, notwithstanding the client has copies of all correspondence and all documents filed in connection with the client's transactions; it further appears that the only papers of which client now has no copies consist of memoranda of authorities relating to the questions of law involved in client's transactions.

There does not seem to be any canon of ethics or any previous opinion that touches the question of the inquirer, who asks the following:

Query 1: Is the attorney obliged to deliver his entire office file to client without restriction?

Query 2: Is the attorney obliged to submit the file for the inspection of client or his agent (not an attorney)?

Query 3: Must the attorney deliver to client or his agent copies of any part or all of the file?

As to query 1 and query 3, the Committee is of the opinion that they each involve a question as to the legal rights of the party rather than of ethics. The Committee has uniformly taken the position that it should not undertake to answer questions of that character.

As to query 2, it is the opinion of the Committee that considerations of good professional taste, if not of ethics, should prompt the attorney to permit inspection of his file for the purpose of assisting the client in carrying on the litigation involved.

INQUIRY has been made as to whether, in the opinion of this Committee, it is proper for an attorney to agree with an administrator or executor for compensation in a probate case of less than the amount provided in Section 910 of the Probate Code.

The Committee is of the opinion that a contract for less compensation than that allowed by the Probate Code is professionally proper in any individual case where such compensation is fixed by taking into consideration the elements set forth in Canon 12 of Professional Ethics of the American Bar Association, which a lawyer should consider in fixing his fees. A contract in violation of said Canon 12 is professionally unethical, and particularly so when made for the purpose of underbidding other attorneys.

The percentage scheduled in the Probate Code is applicable to every case of the same nature and is allowed, in the absence of contract, as compensation to the attorney conducting the ordinary probate proceedings. But there is no law, statutory or otherwise, which requires an administrator or executor either to employ an attorney or to pay him the scheduled percentage. It may become necessary for an attorney to fix his fees by contract. The adherence to the Probate Code schedule in all cases is open to the same objection made to an obligatory fee schedule. In considering this problem, the Committee on Professional Ethics and Grievance, American Bar Association, in Opinion 28, said:

> " 'A lawyer's adherence to any obligatory fee schedule which is applicable to every case of the same nature, would apparently result in a violation of Canon 12 of the Canons of Professional Ethics of this Association which states the various elements which a lawyer should consider in fixing his fees. The first paragraph of that canon states that the amount of the fee must in each case depend, to at least some extent, on the client's ability to pay, and the canon even goes so far as to say that the client's poverty may require a charge that is actually less than the value of the services rendered, or even none at all. Further than this, the six other guides which the canon provides for determining the proper amount of a fee, make it equally impossible to fix any standard fee for any given class of cases, as it would be impossible for all cases in any class to fall within the same category in so far as these guides are concerned. The canon plainly indicates that in fixing fees a lawyer should take into consideration all of the circumstances surrounding each individual case.' "

* * *

WE have been asked for an advisory opinion in answer to the following question:

An attorney practicing law in a large city "moves his office to a location therein which forms a well-defined business and professional entity, with its own district business and professional mens' association, etc." Is it professionally proper for him to send an announcement of the removal of his office to business men and members of professions other than law "in that community, to acquaint them with the fact of his location among them?"

In the opinion of the Committee, it would not be professionally proper for the attorney to send an announcement of the removal of his office to business and professional men in the community "to acquaint them with the fact of his location among them," or for any other purpose. Such an announcement, if sent to others than members of the legal profession, must be construed as a solicitation of professional employment, which can only be justified by the personal relations which may exist between the attorney and the person solicited. Admittedly, no such relationship exists in the case stated in the question.

AMERICAN BAR ASSOCIATION CAMPAIGNS AGAINST SUPREME COURT INCREASE

THE American Bar Association's Special Committee appointed for the purpose of organizing opposition against President Roosevelt's proposal to increase the membership of the Supreme Court, recently sent Mr. Preston Neilson, of the New York City Bar, to California to arouse the interest and support of local bar associations in the campaign. Mr. Neilson was the guest of the Board of Trustees, together with Guy Richards Crump, John Perry Wood, local representatives of the American Bar Association, and Alfred Wright, chairman of the Los Angeles Bar Association Committee, at its regular meeting. He suggested ways and means of informing the public of the reasons why it is not desirable to increase the Supreme Court membership.

The Board endorsed the purposes of the A. B. A. campaign against the court bill, and voted to assist the local representatives of the national association. A bureau will be organized to provide competent speakers who may be called upon by the A. B. A.'s local committee to address meetings which it is planned to hold.

The committee of the Los Angeles Bar Association heretofore appointed by the Board to enlist the active opposition of association members, as well as the public to the proposed legislation, will be requested to plan and execute a campaign similar to the one conducted a few months ago. The committee will be enlarged for this purpose. Funds will be sought by voluntary contributions to defray the expenses of the campaign.

The coordinating committee of Southern California members of the American Bar Association in opposition to the Supreme Court bill before the Congress is composed of the following: Guy R. Crump, chairman; John Perry Wood, Allen Ashburn, J. C. Macfarland, Raymond Haight, Marshall Stimson, Alfred Wright, Ernest Williams, Jefferson P. Chandler, Roy V. Rhodes.

JUNIOR BARRISTERS' ACTIVITIES

By James C. Ingebretsen, Chairman Junior Barristers

JAMES C. INGEBRETSEN

ACTIVITIES of the Junior Barristers for the first half of the current year ended with the Annual Spring Frolic at Riviera Country Club on June 18. With the exception of the intensive membership drive now under way, general committee work has been suspended for the summer.

Nearly 150 Court Clerks and Junior Barristers attended the Clerk's Night dinner at the Hayward Hotel, May 6th. The series of early morning breakfast talks were addressed by Mr. Rupert B. Turnbull, Judge Robert W. Kenny, and Judge Leon R. Yankwich, in the order named, on the subjects of "Bankruptcy Practice," "Practice in the Law and Motion Department," and "Jurisdiction of the Federal Courts."

Under the supervision of the Speakers Bureau Committee many Junior Barristers have spoken on the radio program of the Los Angeles Bar Association. Plans for a network broadcast of a series of ten fifteen-minute skits, relating to problems of juvenile delinquency, are being worked out by a special committee headed by Maurice J. Hindin.

The Juvenile Crime Prevention Committee has arranged to bring speakers, selected from the Junior Barristers, before high schools of the county in the fall as a part of the Committee's educational program.

Early in the year a questionaire form was submitted to all of the members of the Junior Barristers. Approximately one hundred members replied expressing a desire to serve on one or more committees. A list of the Officers, members of the Executive Council, and Advisors was printed in the May issue of THE BULLETIN.

Members --- Please Take Notice!

IT is the desire of the Board of Trustees that lawyers who, in the light of practical experience, conclude that certain provisions of the codes should be amended, clarified or repealed, shall submit their suggestions and recommendations to appropriate bar committees for consideration. All such proposals will receive attention by the committee to which they are referred, and a report thereon made to the Board.

A list of Bar Committees was recently published in *The Bulletin*, giving the names of the chairmen, secretary and members, respectively, for the information of all lawyers who may wish to submit proposed changes which they believe will improve the administration of justice. Send all communications to the chairman of the committee.

Los Angeles Bar Association.

(Continued from page 320.)

must be concluded that the Act operates within well established principles of constitutional law.

Respondent's second contention was described by the Court as resting "upon the proposition that manufacturing in itself is not commerce." As a possible refutation thereof the Court cited the argument of the government that because the interdependent units of respondent's enterprise were located in different states its operations constituted a "stream" or "flow" of commerce, and that the Aliquippa plant as an integral, inseparable part thereof was subject to federal control on the same theory that stockyards and grain elevators have been regulated as operating "in the stream of commerce". The Court, however, proceeded to a broader principle for justification of the Act.

> "The Congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to 'enact all appropriate legislation' for its protection and advancement . . .; to adopt measures 'to promote its growth and insure its safety'; to foster, protect, control and restrain. . . . That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it'. . . . *Although activities may be intrastate in character when separately considered, if they have such a close and substantial relationship to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control.* . . . Undoubtedly the scope of this power . . . may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would . . . create a completely centralized government. . . . The question is necessarily one of degree." (Italics ours.)

Perhaps it is interesting to note, depending upon one's social and political philosophy, that at this point in the decision the Court considered the *Schechter case*[22] and the *Carter Coal Co. case*.[23] The former is dismissed as having involved an effect on commerce too remote to be within the sphere of federal control, and the latter's obituary reads only that the requirements of the Guffey Act "went beyond any sustainable measure of protection of interstate commerce."

PROBLEM BEFORE COURT

Thus the problem before the Court was: Assuming due process, would a labor dispute between respondent and its employees so directly and adversely affect interstate commerce that Congress could regulate respondent's relations with its employees for the purpose of attempting to prevent such a labor dispute although neither respondent nor its employees were engaged in interstate commerce? The Court's conclusion as stated by Chief Justice Hughes was:

> "In view of the respondent's farflung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would

[22]A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 79 L. Ed. 1570, 55 Sup. Ct. 837 (1935).

[23]Carter v. Carter Coal Co., 298 U. S. 238, 80 L. Ed. 1160, 56 Sup. Ct. 855 (1937).

> be immediate and catastrophic. . . . *When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities,* how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war". (Italics ours.)

The question whether the Act failed to provide for due process of law, respondent's remaining contention, was disposed of by the Court's finding that the right of employees to self-organization for lawful purposes has long been recognized and hence may be the subject of legislative protection; that the much-maligned "majority rule" imposes upon the respondent only the duty of bargaining with the proper representatives of labor organizations and does not preclude it from making any contracts it may choose with individual employees; that the Act does not compel agreements to be made between respondent and its employees; that respondent's privilege to hire and discharge whomever it pleases is not impaired except in so far as the same may be an "unfair labor practice" as defined in the Act; that it is of no consequence that the Act is not as comprehensive as it might be in light of the problem approached or that it appears partial to the employee, because the test is one of power and not of policy; and that the Act affords ample security against arbitrary action by those authorized to administer it in providing for a full hearing and right of review by the Courts.

A second case[24] concerned the applicability of the Act to a Michigan corporation which manufactured and assembled trailers and their accessories within the State of Michigan. The Court found it to be the largest concern of its kind in the United States with sales offices and distributors in many states as well as a wholly owned subsidiary operating in Canada; also, that a majority in value of the materials used in manufacture were brought to its plant from other states and that in excess of eighty per cent of its products were shipped out of Michigan for sale in other states. The corporation was alleged to have discharged certain employees for union activities in its Michigan plant as a result of which a series of events similar to those involved in the *Jones & Laughlin Steel case* transpired to bring the case before the Supreme Court. Again, as in the *Jones & Laughlin Steel case,* the respondent offered no evidence but relied on its position that the Board was without jurisdiction because of the invalidity of the Act. The Supreme Court ruled the principles declared in the *Jones & Laughlin Steel case* were applicable to respondent, and ordered the matter remanded for further proceedings in accordance with the Act.

The third case[25] was that of a Virginia corporation engaged in manufacturing men's clothing at its factory in Richmond. It was found that practically all the materials used came from outside the State of Virginia and that more than eighty percent of the finished clothing was disposed of outside the State.

---

[24]National Labor Relations Board v. Fruehauf Trailer Co., ... U. S. ...., 81 L. Ed. 582, ... Sup. Ct. Rep. ..... (Decided, April 12, 1937).

[25]National Labor Relations Board v. Friedman-Harry Marks Clothing Co. .... U. S. ...., 81 L. Ed. 585, ... Sup. Ct. ..... (Decided, April 12, 1937.)

For reasons to be set forth later, it should be noted that once more there was no defense on the merits but respondent relied solely upon its claim of unconstitutionality of the Act.

The Board had found as a fact that respondent's business was dependent on purchases and sales in interstate commerce and upon interstate transportation. The Supreme Court adopted this finding of the Board, and on the authority of the *Jones & Laughlin Steel case* held the Act applicable to respondent.

Four Justices joined in what conservatively may be designated a violent dissent to the three cases, but as suggested earlier herein, neither concern nor purpose permits an academic consideration, and the law established by these cases is in itself parent to innumerable problems besides those possible of consideration within the special limitations of this and the succeeding article.

AUTHORITY TO REGULATE

The authority of Congress to regulate the instrumentalities of interstate commerce, subject to certain limitations not material here has not been denied. Thus, those matters actually and directly connected with commerce have been subject to almost unlimited regulation and the Court has found little difficulty in sustaining acts requiring automatic couplers and continuous brakes on cars in interstate commerce,[26] fixing the liability of employers for injuries to employees engaged in interstate commerce,[27] and fixing intrastate railroad rates

[26]Johnson v. Southern Pacific Co., 196 U. S. 1, 49 L. Ed. 363, 25 Sup. Ct. 158 (1905).

[27]Mondou v. New York, New Haven, etc. Ry., 223 U. S. 1, 56, L. Ed. 327, 32 Sup. Ct. 169 (1912); but cf.; Howard v. Ill. Central R. R.; 207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141 (1908), holding "Federal Employers' Liability Act" of 1906 unconstitutional.

to prevent unjust discrimination against interstate commerce.[28] The power of Congress to "facilitate amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation" was determined in *Texas & N. O. R. R. v. Brotherhood of Railway & S. S. Clerks,*[29] and in a recent case it was held that this authority included the power to impose on the employer the obligation to negotiate with representatives of the employees.[30]

Legislation regulating the use of navigable rivers[31] and the transmission of messages by telegraph[32] has been unheld. In two cases arising under the Wagner Act, the appellants admittedly were engaged in interstate business and the power of Congress to prescribe regulations for their conduct was unanimously affirmed.[33]

The dividing line between interstate and intrastate enterprises is not easily discerned. Decisions prior to the instant cases presented factual situations where the subject involved was either preceded or followed by the movement of articles in interstate commerce. In the "Wagner Act cases" importation *and* exportation in interstate commerce were necessary to the conduct of the businesses under consideration. Only in cases where the concept of the "stream of commerce" was applied, had the Supreme Court theretofore sanctioned federal regulation of private industry.

In *Coe v. Errol,*[34] a New Hampshire municipality levied a general property tax on logs cut in that State, which in being floated down a river to Maine, were detained temporarily at the Town of Errol, New Hampshire, by low water. The Court, in upholding the tax, stated that:

> "Though intended for exportation, they may never be exported; the owner has a perfect right to change his mind." . . .

and found that interstate control over the logs did not begin

> ". . . until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State."

The same reasoning was employed in *Minnesota v. Blasius,*[35] sustaining a non-discriminatory tax upon property, which although connected with the flow of interstate commerce, had come to rest within the state. The principle was applied, also, where coal had been shipped from Pennsylvania to New Orleans, and although it was intended later to be sold and exported to other points, the Court found that the interstate movement had ceased and the coal no longer was exempt from taxation in Louisiana.[36]

Certain other cases defining the beginning and the ending of interstate commerce deserve mention. In *Arkadelphia Milling Co. v. St. Louis Southwest*

---

[28]Houston, E. & W. Texas R. R. v. United States, 234 U. S. 342, 58 L. Ed. 1341, 34 Sup. Ct. 833 (1914).

[29]281 U. S. 548, 74 L. Ed. 1034, 50 Sup. Ct. 427 (1929).

[30]Virginian Ry. v. System Federation No. 40, ... U. S. ...., 81 L. Ed. 470, ... Sup. Ct. .... (decided March 29, 1937).

[31]The Daniel Ball, 10 Wall. 557, 19 L. Ed. 999 (1871).

[32]Pensacola Teleg. Co. v. Western Union Teleg. Co., 96 U. S. 1, 24 L. Ed. 708 (1877).

[33]Washington, V. & M. Coach Co. v. National Labor Relations Board, ... U. S. ...., 81 L. Ed. 601, ... Sup. Ct. .... (decided April 12, 1937); Associated Press v. National Labor Relations Board, ... U. S. ...., 81 L. Ed. 603, ... Sup. Ct. .... (decided April 12, 1937).

[34]116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. 475 (1886).

[35]290 U. S. 1, 78 L. Ed. 131, 54 Sup. Ct. 34 (1933). See, also: Bacon v. Illinois, 227, U. S. 504, 57 L. Ed. 615, 33 Sup. Ct. 299 (1913); Diamond Match Co. v. Ontonagon, 181 U. S. 82, 47 L. Ed. 394, 23 Sup. Ct. 266 (1903).

[36]Brown v. Houston, 114 U. S. 622, 29 L. Ed. 257, 5 Sup. Ct. 1091 (1885)

Rys.[37] an attempt was made by certain shippers to enjoin the enforcement of intrastate rates fixed by the state railroad commission. One of the questions was whether shipments of rough material from the forest to the mills in the same state for manufacture, followed by shipments of the finished products to points outside the State, was a continuous movement in interstate commerce. Markets were almost entirely without the state, and from the time the trees were felled until sold and shipped to the customer, it was known and intended that ninety-five per cent of the finished product would be so sold and shipped. In denying the injunction the Court declared that the finished articles were not in interstate transportation until sold and delivered.

> "It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until it had been subjected to a manufacturing process that materially changed its character, utility, and value."

So, dealers in cotton, who purchased on their own account for purposes of resale and shipment to other states were held not to be engaged in interstate commerce,[38] the Court stating that ginning, transporting, warehousing and compressing cotton, like the growing of it, were transactions in intrastate commerce.

The same reasoning was applied where plaster was shipped into California and commingled with the common mass of local property, the Court being of the opinion that its interstate character had ceased.[39]

Upon these principles the Supreme Court held that mining, manufacturing, processing, agriculture, *et cetera,* were local activities and not within the power

---

[37]249 U S. 134, 63 L. Ed. 517, 39 Sup. Ct. 237 (1919).
[38]Chassanoil v. City of Greenwood, 291 U. S. 584, 78 L. Ed. 1004 54 Sup. Ct. 541 (1934).
[39]Industrial Association v. United States, 268 U. S. 64, 69 L. Ed. 849, 45 Sup. Ct. 403 (1925).

of Congress to regulate, although the products thereof subsequently were exported. In *Kidd v. Pearson,*[40] the Court said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form or use. The functions of commerce are different. . . . If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing."

The rationale of the decision in *Kidd v. Pearson* (supra) was expressed more fully in *Heisler v. Thomas Colliery Co.*[41] when the Court said:

> ". . . It [federal control of production] would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the

[40]128 U. S. 1, 32 L. Ed. 346, 9 Sup. Ct. 6 (1888).
[41]260 U. S. 245, 67 L. Ed. 237, 43 Sup. Ct. 83 (1922).

> South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production."

Similarly, it was said in *Oliver Iron Mining Co. v. Lord:*[42]

> "Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation. . . . Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce."

The same principle has been applied to the production of oil.[43]

---

[42]262 U. S. 172, 67 L. Ed. 929, 43 Sup. Ct. 526 (1923).

[43]Champlin Refg. Co. v. Corporation Commission, 286 U. S. 210, 76 L. Ed. 1062, 52 Sup. Ct. 559 (1932).

MUNICIPAL CORPORATION PRACTICE

By Leon Thomas David, of the Los Angeles Bar*

THE development of the corporate structure in private business was inevitable (1) because it made possible the financing of private enterprises in a manner utterly impractical where the older forms of association were employed; (2) because it permitted benefits and burdens to be apportioned and shared by large groups of individuals who singly could not have carried out the enterprise; (3) because it permitted flexibility in expansion of enterprise; and (4) because corporate organization was adaptable to the problems of management.

The public corporation is one of the oldest forms of corporate organization, but until the turn of the century this form had never been adapted to new business methods nor had it undertaken any functions other than those embraced by the police power, except in rare instances. Neither its organization nor its functions as prescribed by law or as carried on in practice were complex. Despite the obvious progress made by the private corporation, few changes were made in constitutions or statutes to allow these advantages to be shared by public agencies.

However, in the last thirty-five years the public corporation has become closer kin to the private corporation. A municipal corporation or quasi-municipal corporation has been found a convenient instrumentality for accomplishment of many public ends scarce dreamed of a few years ago. The complexities of modern living in metropolitan areas have called forth new powers, methods and procedures even in the traditional field of the exercise of police power. The large scale financing of public enterprises has led to the development of the governmental corporation structure even as the feasibility of financing private enterprises on a large scale was in part responsible for the growth of the private corporation as a form of private business.

GOVERNMENTAL CORPORATIONS.

A few years ago most governmental powers were directly carried on by legislative bodies of the state and the federal governments. Some administrative agencies acquired the status of quasi-corporations for particular fields of governmental activity, but these were the exception rather than the rule. Within the state, counties acquired the status of quasi-municipal corporations in some matters, but in others were regarded as direct extensions of the state governmental machinery. Municipal corporations likewise were well known to the law. Now, however, we have an unending creation of governmental corporations, tax districts, and authorities under both state and federal auspices, all of which involve public law in their creation and in the conduct of their operations.

In the trend of modern business away from the individual entrepreneur to corporate enterprise a vast body of law was built up. In the metamorphosis of the public corporation, an even larger body of law has come into being, due in part to the position of such agencies under our constitutional system. While made in reference to city government, the following observations which I have stated before elsewhere are generally applicable, and may be repeated here:

Throughout all municipal law one principle must be remembered—a municipal corporation is a creature of constitution or statutes. It has no powers nor duties save as granted or imposed by organic law. Where a power is granted, to be exercised under certain conditions or in a certain way, conformity to the method or mode prescribed is essential to the existence of power. An ordinary

*Assistant City Attorney.

corporation chartered in California may ask and receive power to conduct any lawful business; and so long as the business conducted does not transgress any positive law it has unlimited power to effectuate its business purposes. But a municipal or quasi-municipal corporation operates on the reverse of such a rule. It may conduct only such business as is expressly or impliedly authorized by law, in strict conformity to time, place, condition and mode specified; and as to matters on which the law is not expressed, it has (in general) no power nor duty, nor can it presume to act in absence of such authority, however desirable it may seem to be to do so.

The one exception to the principle exists in the field of municipal affairs in which the Constitution makes the legislative body of the freeholders' charter city the repository of all legislative power, to the same degree that the state legislature is in nonmunicipal affairs. Even this power of chartered cities is subject to the specified limitations of the charter itself.

PUBLIC LAW, TECHNICAL.

The practice of municipal corporation law, or to use a more general term, the practice of public law, therefore becomes highly technical. The public official who operates in the field of public law, therefore, has an ever-increasing need for adequate legal advice in this field. On the other hand, everyone who deals with governmental agencies is bound by the limitations which attach to their legal spheres of action. Therefore, there also is an ever-increasing need for lawyers who are well versed in the substance of public law, in its mechanics, and in the processes of statutory interpretation.

Nevertheless, until some fifteen years ago, there was little specialization in this field, either on the part of attorneys representing governmental agencies or among attorneys engaged in private practice. In California a few firms specialized in public bond matters, and here and there there were private practitioners consulted as experts in local improvement law. Today the growth in power and prestige of governmental agencies, including the municipal corporation, is changing the picture. The general practitioner finds that perforce he must take into consideration constitutional and administrative law in conducting the legal business for his clients, and public agencies everywhere require the services of men and women in this specialized field.

The specialist engaged in the privvate practice of public law is necessarily versatile. In a growing community, public improvements give rise to one type of public law practice. When, however, a depression sets in (as it did in regard to special assessment proceedings in this locality), he must ride some other horse within his field or be left behind. With the coming of work relief programs the public law specialist had to shift his practice to include matters involving the constitutional relationships between the federal government on one hand and state and local governments on the other. His ordinary contacts with contractors and local officials had to be maintained; while he found it necessary to improve opportunities to develop his legal relationships with officers of the national government. At the present time, a new field is opening up, in the debt readjustments made necessary by the insolvency of special assessment districts and the impaired financial stability of municipal and quasi-municipal corporations. This particular field of public law practice demands that the public law specialist be conversant with private corporation law; and in order that he may know all of the factors which he must employ to give satisfactory service, either to the public agency or private bondholders, he has had to develop his capabilities for finance.

SPECIALIZATION.

A majority of the cities of the state of California are sixth-class cities, whose population and resources are limited. In such cities there has been little opportunity in the past, and there is no alluring prospect in the future, which will justify the small-town lawyer in municipal specialization. Occasionally, private practitioners have developed public law as a specialty by undertaking to serve groups of small cities and their local law officers in an advisory capacity. There are, however, in this state, over forty chartered cities exercising rather extensive home rule powers in addition to those granted by state law. Within the legal departments of these cities, there has been considerable specialization and a high standard of achievement of public law has developed.

The City Attorney's office of the City of Los Angeles is one of the three largest governmental law offices in the country. The volume of its work can best be gauged by the realization that the annual budget of the City of Los Angeles in its various departments exceeds $100,000,000, this signifying a great diversity of functions and activities, and a corresponding need for highly com-

petent legal service in the civil field. Likewise, the office of the County Counsel of Los Angeles County is one of the nation's largest and most efficient public law offices. Individuals serving or who have served in these two offices have acquired a deserved reputation for proficiency within their particular fields of public law.

The Criminal Divisions of the City Attorney's office, and the District Attorney's office are highly specialized, dealing only with criminal prosecutions, and each has developed experts in the field of criminal law. It often has been regretted by leaders of the bar that the general practitioner has paid so little attention to the legitimate practice of criminal law. If there is to be a rebirth of criminal law and procedure, it probably must come through the efforts of those engaged in our public prosecuting offices and those who have returned from such service to private practice in the criminal law field.

The rapid advance of the public corporation or agency in diverse activity for the common welfare has involved also definite improvement in training for governmental service. The lawyer was the first professional man to administer government. In his wake has come the engineer, the accountant, the public relations expert, the personnel expert, and representatives of almost every technology. Their work sometimes has preceded, sometimes followed, the advances in governmental structure, aims, and functions.

The public corporation is a creature of legislation. The lawyer, therefore, can collaborate with the other elements in public administration to continuously provide adequate machinery for our cooperative enterprises in government. The lawyer employed by governmental agencies has a special opportunity to serve his fellows well, and to shape the pattern of our life in the process. The lawyer practicing public law as a private career is an essential to public administration as he who serves within the governmental structure. His sound day-by-day representation of his private clientele may throw bright lights into dark corners where otherwise malignant abuses of public power or trust might spring and he is a bulwark against beaurocracy and bad management. The practice of public law has possibilities. To some, it will seem no different than any named specialization in the law; but to others, it is a great adventure, whereby we do our chosen work to the tempo of the heartbeats of a growing West.

Any Suggestions?

***The Bulletin* Committee invites members to offer suggestions, and make criticisms, for the betterment of your monthly publication. Most of all we want contributions of articles by members on subjects of interest and assistance to others in practice. Every lawyer is capable of writing articles on some technical subject, arising out of his own practice experience. Won't you submit such material to the Committee? Send communications to the Bar Association office, 1124 Rowan Bldg.**

The Bulletin Committee.